

16 April 2019

Dr Matthew Butlin  
Commissioner  
South Australian Productivity Commission  
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**Business SA**  
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Dear Dr Butlin

I write in response to your Draft Report on Stage 1 of the Government Procurement Inquiry (goods and services), subsequent to Business SA's initial submission to this inquiry.

### Executive Summary

- The Stage 1 Draft Report provides a comprehensive summary and analysis of key issues facing businesses tendering to the State Government and it is clear the Commission has taken the time to understand and acknowledge the particular nuances of SME interactions with Government tenders.
- Business SA strongly supports a better structure to support SMEs to compete for government tenders, although this should not be predicated on the basis that local businesses need a price subsidy to be competitive.
- Improved certainty of the State Government's future tender requirements is paramount to incentivizing SMEs to compete for work and Business SA welcomes the Commission's recommendation for a transparent 24-month forward procurement program.
- Business SA supports the Commission's recommendation to train SMEs in responding to State Government tenders, including specific requirements of its Industry Participation Policy.
- The ability of SMEs to respond to additional information requests in this inquiry will be limited and Business SA encourages the Commission to carefully target how it prioritises additional information requests, and consider the use of cameos where it needs to reconcile hypothetical changes.

Should you require any further information or have questions, please contact Andrew McKenna, Senior Policy Adviser, on (08) 8300 0009 or [andrewm@business-sa.com](mailto:andrewm@business-sa.com).

Yours sincerely,

Anthony Penney  
Executive Director, Industry and Government Engagement





## General feedback on Draft Report

1. Business SA welcomes the comprehensive first stage report of the Commission's Procurement Inquiry into goods and services where the State Government currently spends \$5.1 billion per annum. It is critical that small to medium sized business are best placed to access that spend in tandem with required value for money outcomes being achieved. We recognise the pressure State Government finances are under and the need to be able to deliver broader cost reductions, including to payroll tax, but supporting local businesses should not presuppose that buying local means South Australian business start at a price disadvantage.
2. The Commission's investigation has the potential to instigate substantive reforms to improve the efficiency and effectiveness of State Government procurement, and Business SA recognises this will only happen with adequately trained people in the right jobs within Government. On that note, we recognise the Commission's finding that the proportion of 3,200 procurement staff formally trained in procurement is low, which should be addressed. The frustration for many SMEs comes out when they feel their explanations for how a product or service can meet a tender's requirements fall on deaf ears, or when they do not even have the opportunity to meet directly with a relevant procurement officer.

Businesses recognise the tight probity constraints public sector staff are under, but more formal training of procurement staff will better enable them to more confidently execute their roles through both ensuring a rigorous process while at the same time remaining open to the innovative ways SMEs can offer to meet a tender's requirements. This is particularly important for building knowledge of local market capabilities within the State's public sector.

3. Transparency of the tender process is one of the most significant hurdles to limiting local business involvement in State Government tenders, and we acknowledge your finding that:

*'The Commission has been told by businesses that in practice the information on forward tenders published on the SA Tenders and Contracts website by agencies is a small proportion of all the tenders above \$220,000 that ultimately are put to market. The Commission considers this to be likely to be the case, based on some feedback from selected agencies.'*

It should be an absolute minimum requirement that all tenders are clearly accessible online, including for software where we understand the communication of substantial Government requirements is not always available to SME businesses.

4. Business SA welcomes the Commission's acknowledgment of the value in reducing the amount of information duplicated in successive tenders regarding financial and other characteristics of tendering organisations. This issue has been consistently raised by our members and articulated in our initial submission. It is particularly important that this matter be addressed to increase the likelihood of SMEs accessing tenders, with limited time or people to spend filling out duplicate or unnecessary information requests. We would also ask that the Commission think about why tenders are structured that way, and whether all these information requests have any material bearing on how a procurement decision is made.



5. Business SA recognises the Commission's focus on the importance of market engagement and consultation prior to tender. Not only does this help ensure value for money but enables the Government to structure tenders with the full current and future market capabilities and constraints in mind.

In a recent example provided by a member in relation to a State Government vehicle contract, there was inadequate consideration of future refrigerant suitability in the medium term which could have been avoided with consultation on technical evolutions in this niche market.

6. Businesses inherently crave stability of Government policy to enable them to make investments and carry on their business without having to deal with externalities beyond that of their market competitors both here and overseas. In relation to changing procurement policies, Business SA acknowledges the Commission's finding that the South Australian Industry Participation Policy (SAIPP) has already been amended five times with changes to thresholds, weights and scorings. While the State Government has been looking to improve the policy, the constant changes also make it difficult for the market, particularly SMEs, to stay abreast of.

7. Business SA understands the number of direct negotiation tenders has more than doubled in the past four years, a concerning sign that the transparency of State Government procurement is falling. This is coupled with the Commission finding that only 40 per cent of reported contracts were entered into through a competitive process, albeit accounting for 70 per cent of reported contract value.

We acknowledge the instances where direct negotiation is the most pragmatic and cost-effective way for Governments to tender, but the fact that non-market tenders are increasing at such a rapid rate does not engender confidence that the State Government is both getting value for money, and ensuring it captures all market players including new local businesses.

There is also less trust of Governments using a direct negotiation approach as compared to the private sector where businesses find it to be more acceptable.

8. In relation to issues around intellectual property (IP) retention by the State Government, Business SA acknowledges the Commission's advice that *'it is reasonable to consider IP as a part of the contractual arrangements, without accepting the point that the expectations of suppliers should always be met.'*

We do not advocate for the Government to forego its legal right to retain IP, but we need to see what evidence the Commission or others can demonstrate to prove the public value in the State Government insisting on retaining IP. Ultimately, if Governments want to retain IP they should be able to demonstrate how they are able to leverage that IP for the greater public good. If there is no evidence to substantiate this, then the Commission should more seriously look at limits on the ability of State Government to lock down their IP which could otherwise be leveraged by its developers, particularly SMEs.



9. Business SA notes the absence of any analysis of whether State Government entities are complying with competitive neutrality guidelines in the procurement process.

There are many examples of State Government businesses competing with the private sector and while there are established grounds to enable this to happen, it is critical that procurement processes strictly ensure private sector players are judged on a level playing field.

The 2015 Federal Government instigated Harper Review of competition policy recommended that '*All Australian governments should review their competitive neutrality policies. Specific matters to be considered should include: guidelines on the application of competitive neutrality policy during the start-up stages of government businesses; the period of time over which start up government businesses should earn a commercial rate of return; and threshold tests for identifying significant business activities.*'

In responding to the Harper Review, the Federal Government agreed with these recommendations and acknowledged its support for updating competitive neutrality policies and guidance, and stated it would encourage the states and territories to undertake similar reviews, including by seeking to update competition principles.

The State Government's competitive neutrality policy has not been updated since 2002 but Business SA still expects this topic to form part of the Commission's focus in its final report.

10. In assessing the effectiveness of an Industry Participation Plan (IPP) in improving outcomes for local businesses, the Commission advises: '*Where the IPP tipped the balance between an external (i.e. not South Australian) supplier and a local supplier, the presumption is that the State pays a higher price for the goods or services and competition is reduced.*'

Business SA is mindful that any critique of industry participation policy and its components including IPPs and Economic Contribution Tests (ECTs) does not start from the basis of assuming all local providers are necessarily beginning at a higher price point. As we have outlined more broadly in our submission, there are a host of reasons why local businesses may be overlooked for Government contracts and these are not always about price. While we recognise the high costs of doing business in South Australia can make it more difficult for local providers to be cost competitive, it is too narrow an assumption to make that the only way to support local businesses is through price subsidies.

## Feedback on recommendations

### 11. *Draft Recommendation 5.1 - Support*

12. In relation to *Draft Recommendation 5.2* to make transparent the relative scoring of Industry Participation Plan and Economic Contribution Test scoring to suppliers, Business SA cautions that privacy concerns from tenders around all aspects of their tenders needs to be adequately considered for, particularly in tenders with limited market participants. This is particularly important when assumptions can be made about other aspects of tender outcomes by deduction, for example price.



This type of feedback could be provided on aggregate across a broader industry which may help to alleviate such confidentiality concerns.

13. **Draft Recommendation 5.3** – Business SA is mindful that of the sample of contracts the Commission used to analyse the effectiveness and efficiency of the State Government's procurement system, 41 per cent were under \$220,000. Consequently, we do not support lifting the minimum threshold for which an ECT is required. The ECT should be a light touch way in which to gauge the economic contribution of local businesses and we would not want to see changes to disadvantage the likelihood of SMEs winning low value contracts. A \$200,000 contract for a small business can be quite significant and any restructure of the procurement system needs to appropriately consider for this.
14. Business SA supports the intent of **Draft Recommendation 5.4** to strengthen the capacity of SMEs to compete for Government procurement opportunities, particularly training on how to tender, assistance with completing ECT/IPP templates which should also be available in person, and training procurement staff on how to research the capabilities of local businesses.
15. Business SA strongly supports **Draft Recommendation 5.5** to obligate Government agencies to publish a complete forward procurement program over a 24-month moving horizon. As highlighted in our earlier submission, Business SA has received concerning feedback from members on the poor communication of some future tender requirements, including when Government entities simply roll over existing contracts without going returning to the market.

It is crucial for SMEs to have adequate visibility of future Government tender requirements to allow them to plan their own business activities. Instances of SMEs getting no answer on future tender release timeframes, which in some instances can drag on for several years, is entirely unacceptable.

#### 16. **Draft Recommendation 5.6 - Support**

##### **Feedback on Information Requests:**

17. In relation to **Information Request 4.14** on offering innovative goods and services to Government, Business SA has received positive feedback on the NSW Government's Pitch to Pilot approach being trialed; which aims to provide innovative businesses with a new and formal avenue to pitch innovative technologies and solutions to Government, and provide agencies with a new way to expedite procurement of such technologies and solutions.

These types of examples are important for recognising that SMEs require tailored solutions to assist with establishing themselves as a delivery partner of Government.